THE HON'BLE MR. JUSTICE V.V.S. RAO

THURSDAY, THE 17TH DAY OF NOVEMBER, 2005

W.P.No. 19030 of 2001

Between:-

R. Viswanatha Reddy

--Petitioner

And

The District Collector, Cuddapah and two others.

--Respondent (s)

Oral order:- (W.P.No. 19030 of 2001)

The petitioner is a resident of Himakuntla village, Simhadripuram Mandal, Kadapa district. He is allegedly absolute owner of land in survey Nos. 268 and 269 ad-measuring Ac. 1-50 cents and 0-42 cents respectively of the said village. When the respondents commenced the work of laying a road across the said lands, he filed the present writ petition seeking a declaration that the action of the respondents in laying the road in the petitioner's lands is illegal and arbitrary.

The petitioner essentially relied on a certificate issued by the Village Administrative Officer, which is counter-signed by the Mandal Revenue Officer, Simhadripuram, to the effect that the cement road sought to be laid from Parabhavi to the house of Maheswar Reddy would occupy the land ad-measuring Ac.0-36 cents in survey No. 268/2; Ac.0-06 cents in survey No. 268/3 and Ac.0-01 cents in survey No. 269 of Himakuntla village.

In the counter affidavit filed by the 3rd respondent, the allegation of the petitioner that the road is being laid in the petitioner's land, is denied. It is further stated that the proposed road is being laid in the existing Rastha, adjacent to the property of the petitioner and his brothers and that the petitioner's brothers did not raise any objection and the petitioner is not the sole owner. It is further alleged that the petitioner also has a right of access to this Rastha and he cannot raise any objection.

Though the counter affidavit is filed, no reply affidavit is filed refuting the counter allegations. In view of the certificate issued by the Village Administrative Officer, on which strong reliance is placed, this court cannot decide whether there is a Rastha existing adjacent to the petitioner's land or whether a road is being laid in the petitioner's land in an extent of Ac.0-43 cents. These are the questions of fact and cannot be decided in a proceeding under Article 226 of the Constitution of India.

In view of the above, the writ petition is disposed of directing the 2nd respondent-The Deputy Executive Engineer, Panchayat Raj, Pulivendla

to conduct a joint inspection with the 3rd respondent-The Mandal Parishad Development Officer, Simhadripuram and another official of the Revenue department like Mandal Revenue Officer of the area and submit a report to the 1st respondent- The District Collector, Kadapa, who shall take final decision in the matter. Till this exercise is completed, if the petitioner is still in possession of the land, his possession shall not be disturbed. This exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

The writ petition is, accordingly, disposed of. No costs.

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V.V.S. RAO, J

Dated: 17-11-2005

PVKS/*

Nb:- Furnish c.c. in three days.

B/o pvks/*